

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

AMERICAN MEDICAL RESPONSE, INC.

and

Case No. 34-CA-11941

LOCAL 145, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Thomas Quigley, Esq., Counsel for the General Counsel.

Douglas Sullenberger, Esq. and Brian Hermann, Esq., Fisher & Phillips, Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on June 5, 2008 in Hartford, Connecticut. The Complaint herein, which issued on March 31, 2008 and was based upon an unfair labor practice charge and an amended charge that were filed by Local 145, International Brotherhood of Teamsters, herein called the Union, on January 9, 2008¹ and March 28, alleges that American Medical Response, Inc., herein called the Respondent, threatened its employees with discipline or discharge if they engaged in union or other protected concerted activities, and suspended its employee, Frank Kennedy, on June 9 because he joined, supported and assisted the Union, in violation of Section 8(a)(1)(3) of the Act.

Findings of Fact

I. Jurisdiction

The Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization Status

The Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Facts

A. Union Activity

The Union attempted to organize the Respondent's employees at its Bridgeport, Connecticut facility, herein called the facility, beginning in about January 2007. Kennedy testified that he passed out Union buttons and flyers and attended Union meetings and during this period he told William Shietinger, Respondent's General Manager, that he was "involved in" the Union, although he didn't start it, and Shietinger said that he knew about it. This

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2008.

organizational attempt was unsuccessful. Kennedy testified further that in January the Union began another organizational attempt at the facility. Another employee asked him to get involved in the campaign and Kennedy distributed Union buttons and literature. In January, while he was at Bridgeport Hospital, he placed a Union button in one of the Respondent's cars driven by two supervisors, Patrick O'Connor and Shietinger, at a time when they were not in the car. Several minutes later O'Connor approached him and said, "You put that Union button in the car" and Kennedy admitted that he did it, and they laughed about it. Kennedy also testified that early in January he was given notices announcing a Union meeting on January 8 at the Union hall in Stratford, Connecticut, the city adjacent to Bridgeport, and he distributed these notices to Respondent's employees that he met at area hospitals. On one occasion during this period prior to the January 8 meeting, O'Connor and Corey Clabby, Respondent's Operations Supervisor, observed him distributing Union flyers. Clabby testified that he did not observe Kennedy handing out Union literature prior to January 9. Approximately forty employees attended the Union meeting that was held on January 8². Matthew Hvlana, an EMT employed by the Respondent, who is Kennedy's primary partner, testified that he was given a Union button by Kennedy and observed Kennedy putting a Union button in the supervisor's car, but he could not place a date on when either occurred.

Shietinger testified that was not aware of any union activity at the facility in about January 2007. However, at about that time he found an unsigned note saying that it was unfair that the writer was not getting overtime work. He recognized Kennedy's handwriting and asked him to come to his office. He told Kennedy: "You don't need to feel like you have to threaten me by going to the Labor Board. If you want to go to the Labor Board, go to the Labor Board." He asked Kennedy what his concerns were and Kennedy said that he was not getting enough overtime work. Shietinger asked him what hours he listed for availability, and Kennedy said he listed four hours on Saturday, and Shietinger said that if he really wanted overtime work he would have to list more available hours. Shietinger testified that as of January 9, he was unaware of any union activity at the facility, and he had not seen Kennedy distributing Union authorization cards or buttons, although Kennedy has mentioned a union to him "multiple times in the past...any time he's mad." Sometime after January 9, while he was driving in one of Respondent's cars with O'Connor, O'Connor showed him a Union pin that he found in the car, but as far as he knows, O'Connor never spoke to Kennedy about the pin. The Union wrote a letter to Shietinger stating: "Please be informed that your employee Frank Kennedy is a member of the Union Organizing Committee." The letter is dated January 9, the postmark is January 10, and Shietinger testified that he received the letter on January 11, after Kennedy was given his suspension.

David Reyes, who is employed at the facility as an EMT, testified that he was aware of a Union organizing campaign at the facility prior to January 9. He was told of the campaign by fellow employees, but not by Kennedy. Further, prior to January 9, he had not seen Kennedy wearing a Union button, soliciting authorization cards for the Union or handing out any literature for the Union. Tracy Harding, who is employed at the facility as a paramedic, testified that she was not aware of any Union organizing campaign prior to January 9, had not seen Kennedy, or any other employee, handing out Union literature and did not see Kennedy wearing a Union button prior to January 9. O'Connor, Respondent's Operations Supervisor at the facility, testified that on an occasion while he was driving in one of Respondent's cars with Shietinger, they found a Union pin in the car, although he could not be certain whether this occurred before or after January 9. He did not ask Kennedy, or any employee, if he had placed the pin in the car.

² The Union filed a petition with the Board on February 7, and an election was held on March 20, which the Union lost 40 to 134. The Union filed, and then withdrew, its objections.

He also testified that he was not aware of the Union's January 8 meeting until a later date and he never saw Kennedy distributing Union literature. Edwin Daymonde, who is a supervisor at the facility, testified that when he met with Kennedy on January 9 he was not aware that he was involved with the Union or was distributing literature for the Union. However, "Frank, for years
 5 had always complained that we should have a union...he had always complained...that we need a union."

B. The January 9 Radio Incident

Each of the Respondent's vehicles, as well as the office in Bridgeport, has a two way radio for the transmission of assignments, as well as other messages to and from the employees in the vehicles. The employees receive these messages from the dispatcher and others at the facility, and respond to the messages over the radio as well. The genesis of this case is an unsolicited statement that Kennedy made over the radio on the morning of January 9.

Kennedy and his partner Hvlana work from 6 a.m. to 4 p.m., Monday through Thursday. They punched in on January 9 and while on the way to their vehicle, Car 712, Kennedy observed two other employees sitting and talking. He and Hvlana went to their vehicle and drove to the post assigned to them. While waiting for an assignment, they heard a call over the radio for car 7119. Kennedy testified that this call was made five times without a response and the dispatcher said, "7119 isn't answering their radio" and Kennedy realized that this was the crew that he observed as they were leaving the facility that morning. Sometime between these calls to car 7119, he and Hvlana received a non-emergency call to transfer a patient from a nursing home to either a hospital or a doctor's office, and Hvlana "roger'd" (acknowledged) the call. Before leaving for the call Kennedy decided that with no response to the five calls to car 7119, he should do something so that the dispatcher knew that the radio was working, so he got on the radio and said: "The radios are working." He testified that this statement was not made in a sarcastic manner.³ Because of the nature of the system, this message was broadcast to the office as well as to all of the Respondent's vehicles in the area. He and Hvlana then went to make their call when they received a call from the dispatcher to return to the facility, Operations, and when they returned to Operations, Kennedy went to Daymonde's office. Hvlana testified that while they were at their post waiting for an assignment he heard the dispatcher calling for car 7119. He and Kennedy then received a call and, as they were driving to the call, Kennedy got on the radio and said that the radio was working. Shortly thereafter, before they could make their call, they received a call to return to Operations, which they did.

Shietinger testified that on the morning of January 9 he was driving in one of Respondent's vehicles, as he often does, visiting clients and checking on employees. He often listens to radio transmissions, both in his car and in his office at the facility. That morning he heard dispatch attempting to contact car 7119. Dispatch then called car 712, and Hvlana answered the call by repeating "712." Dispatch then issued them an assignment, and Hvlana responded properly by repeating the call. About ten seconds later, he heard Kennedy's voice saying: "Yes, the radios work." He testified that he viewed this as "a sarcastic comment" and he was aware of prior discipline of Kennedy for radio misconduct. Shietinger then called Daymonde at the facility, told him that Kennedy had made a sarcastic comment over the radio, and asked him to check Kennedy's personnel file to see what level of discipline he was up to at that time.

³ The General Counsel introduced into evidence the CD of these transmissions to establish that this statement was not made in a sarcastic manner. Initially, I note that the statement was: "The radio is working fine." Further, for what it's worth, it did not appear from the CD that the statement was made in a sarcastic manner.

Daymonde told him that Kennedy had a verbal warning and a one day suspension and Shietinger told him to tell Kennedy to return to the office and tell him that he was being suspended for three days for radio misconduct. Shietinger's rationale for the suspension is:

- 5 I didn't feel his statement was warranted. We knew the radios were working. Obviously, his partner heard dispatch, dispatch heard him, so I knew the radios were working. Everybody knew the radios were working. We didn't have a radio issue at the time. And it was another Frank Kennedy comment on the radio and it needs to stop.
- 10 Shietinger did not feel that an investigation was needed before deciding on a penalty because he heard the comment, and it should not have been said on the air.

C. The January 9 Meeting

- 15 Daymonde testified that on the morning of January 9 he received a call from Shietinger saying that Kennedy was unprofessional on the radio and that he should pull Kennedy's personnel file to see what other disciplines were in the file, and to tell Kennedy to return to Operations. After looking at Kennedy's file, Daymonde determined that since he had already received a warning and a one day suspension, pursuant to the Respondent's procedure the next step is a three day suspension⁴, and when he next spoke to Shietinger he told him that a three day suspension was the next step pursuant to the Respondent's progressive discipline policy, and Shietinger agreed. When Kennedy returned to the facility, they met in the operations supervisors' office, a room about twelve feet by twelve feet, with a door at each end of the room and a sliding window. Daymonde was alone in the room when Kennedy walked in. On direct examination, Daymonde testified that he told Kennedy, "Obviously, you know what you're here for" and Kennedy said, "I wasn't unprofessional. Nothing I did was wrong." On cross examination, he testified that upon entering the office, Kennedy said, "I know why I'm here" and Daymonde responded, "Okay, since you know why you're here, you're here for radio misconduct. You'll be sent home. You're going to get a three day suspension" and, at that point, 30 "he blew up." Daymonde told him that he was unprofessional on the radio and he was being given a three day suspension, and Kennedy "...started jabbing his finger at me, yelling and screaming." He said, "You shouldn't be a supervisor...I wasn't unprofessional...I didn't do anything wrong...I'm going to get you." At that point, Shietinger walked into the office and attempted to get Kennedy to calm down, but Kennedy continued yelling at them and pointing. 35 Shietinger again asked him to calm down and told him that he had to leave. When he again failed to calm down, Shietinger told him that unless he left, they would call the police and, at that point, Kennedy left the office.

- 40 Shietinger testified that when he overheard Kennedy screaming he went into the operations supervisors' office and Kennedy began pointing his finger at him, saying, "You're the boss. This is not right. You two don't deserve your positions. You're cowards. You're afraid of

4 Shietinger testified that the "normal pattern" followed by the Respondent in disciplinary cases is verbal warning, written warning, one-day suspension, three day suspension, five day suspension and termination, although this is determined on a case-by-case basis and depends upon the seriousness of the offense. The Respondent's Employee Manual Connecticut Operations that was in effect in 1997, provides that "depending upon the seriousness of the offense and possible mitigating circumstances," the four steps of progressive discipline are a verbal warning with a written record placed in the employee's file, a written warning stating that he/she could be subject to suspension or discharge should the offense be repeated, suspension of the employee and discharge of the employee.

me.” Shietinger told him to calm down, but he continued screaming that he was a coward and Shietinger told him that if he didn’t leave, he would call the police. When Kennedy continued screaming at them, Shietinger went to the telephone and, at that point, Kennedy walked out of the office, still screaming at them. Reyes testified that on that morning he was in the operations area adjacent to the operations supervisors office and could hear Kennedy yelling, “exceptionally loud,” although he could not identify any words that he was using. Harding testified that on the morning in question, she was in the operations supervisors office, but left the office when Kennedy came to speak to Daymonde. After she left the office, she could hear Kennedy yelling: “He was definitely angry. It was not of a speaking conversation. He was yelling.”

Kennedy testified that when he walked in to the office Daymonde closed the door and said, “I’m sending you home and you’re suspended for two days for unprofessional radio procedure.” Kennedy responded: “I’m being sent home for what? I didn’t do anything wrong.” Daymonde said nothing further about what he did, and Kennedy pointed his finger and yelled at him, told him that there was nothing wrong with his radio procedure and that maybe he should not be in that uniform. Daymonde said little or nothing and Kennedy continued to yell and asked to speak to his manager. A minute or two later, Shietinger walked in to the room and said that he wanted Kennedy to go home: “If you don’t leave, I’ll call the police.” During this confrontation he did not call them cowards or say that they should be afraid of him. When he walked out of the office, Hvlana, Harding, Reyes and employee Roseanna Mendoza were in the area. Kennedy told Mendoza about what happened and she said, “I’m going to put my two cents in” and walked into the office. Kennedy walked toward the office and heard Mendoza⁵ say, “This is wrong” or “this is not good” and Daymonde said something to the effect of: “If you don’t shut up you’re going home next.” Kennedy then left the facility. Hvlana testified that all he heard from the office was Kennedy asking: “They’re sending me home for that?” When the door opened, Shietinger told him that if he didn’t leave, he would call the police and they began to yell at each other. After Kennedy walked out of the office, Mendoza said (although it is unclear from Hvlana’s testimony to whom this statement was directed): “Do you want to know why we’re getting a union in here?” Daymonde walked out of the office and said to Mendoza, “If you don’t knock it off, you’re going to go home next.” Daymonde testified that after Kennedy left his office, Daymonde walked into the “bay” area and saw Mendoza: “I don’t know exactly what she said. Her tone of voice was, got higher. Then, as Frank was leaving the building...she kind of fed into the frenzy of what was going on,” although she was not speaking to him. He told Mendoza, “That she needed to stop feeding into the frenzy, there was already enough commotion going on and she needed to stop.” He said that it was making the employees uncomfortable, and she stopped. He testified that, at that time, he had no idea whether she was active for the Union.

On the following day, Kennedy e-mailed Shietinger and asked to meet to discuss the matter and he called Kennedy and they met on Friday, January 11, at about 10:00. When Kennedy arrived at the meeting, Shietinger was there with another person whom Kennedy did not know. He introduced himself as Robert Zagami, from HR, who said that he was there to run the meeting. Kennedy then asked if he could present his side of the story of what occurred on January 9. He said that radio difficulties were a continuing problem at the facility, and said of his statement: “I was just subtly trying to let them know that the radios were okay up there.” He was asked to leave the room for ten minutes. When he returned to the room Zagami told him that they were going to change the suspension, although it is unclear from Kennedy’s testimony what it was originally, or what it was changed to, although it appears that the suspension was lessened. Kennedy’s suspension letter is dated January 11; he believes that he received it on

⁵ Mendoza did not testify.

Monday, January 14, his next work day. After a statement about the meeting with Daymonde and Shietinger on January 9, the letter states, *inter alia*:

After a meeting between you, me and Bob Zagami (Human Resources representative) on Friday, January 11, 2008, we discussed this incident and you agreed that your behavior was inappropriate and that you in fact have a habit of being animated. This is not the first time this type of incident has occurred during your employment with AMR. During this discussion, you were informed that the time served would be considered a three day suspension for your inappropriate behavior. It was further explained to you that should you raise your voice or yell at any member or client of this organization, your employment will be immediately terminated.

Shietinger testified that at this January 11 meeting, they began by discussing the radio misconduct and Kennedy said that he should not have been disciplined because he didn't mean to be sarcastic and was only trying to notify dispatch that the radios were working. They then discussed his inappropriate behavior toward Shietinger and Daymonde on January 9, and Kennedy said that he sometimes becomes animated, but he is trying to control it, and it would not have occurred if he had not been told that he was being suspended. They asked Kennedy to leave and decided to combine the two offenses and uphold the three day suspension, but to limit it to the balance of the day, January 9, for a total of seven or eight hours.

Shietinger testified that one part of the Respondent's rules and regulations relates to radio protocol. Their radio transmissions are public and can be monitored by clients. In addition, they interact with the police and fire departments in the area who also have the ability to monitor their transmissions. The Respondent's 1997 manual, given to all employees, at Article 2.5 states: "Radio communications shall only pertain to the necessary information regarding the call and patient care. Transmissions should always be made in a calm and professional manner and in accordance with Company policy and FCC regulations." Article 12.1 of the same manual states: "Use of radios are for Company business only. Keep transmissions short, clear and to the point." In March 2004, the Respondent posted a notice at the facility restating Articles 2.5 and 12.1 and in October 2006 posted a notice restating this policies and concluding: "...supervisors will be monitoring all communications to ensure these guidelines are followed." Shietinger also testified that in about 2004, the Respondent distributed a memorandum to all EMS and transportation personnel on the subject of "Proper Radio Protocol." It states, *inter alia*:

It has come to our attention over the last few weeks that there has been some inappropriate communications over the radio frequencies. Therefore, it has become necessary to state the following:

All radio channels are licensed to AMR and are monitored by the FCC. Any inappropriate language or conversations over ANY frequencies are subject to fines by the FCC.

Per company policy all communications over the radio are to be official AMR business at no time are the radios to be used for personal conversations, or comments...

Respondent moved into evidence discipline given to other employees for radio misconduct, as well as evidence of prior discipline given to Kennedy. On May 17, 2006, Kennedy was given a verbal warning for radio misconduct for an incident on May 3, 2006 where, after being dispatched to a hospital, he responded: "You people better get on the ball up there." On October 23, 2007 he received a one day suspension for radio misconduct for an incident earlier that day when he responded to a page over the radio by saying: "It seems like

supervision has selective hearing, only hearing what they want to hear.” Further, two other employees were given one day suspensions in November 2007 and warnings were given to two employees in August and September 2006 for radio misconduct. Kennedy was also written up for incidents in October 2004 and May 2005. In October 2004, after being notified that “he was going to be the Griffin car for the day...Kennedy became extremely vocal, belligerent and proceeded to slam an oxygen cylinder.” Upon being spoken to, “...Kennedy continued with his disgust and remained unreasonable and belligerent. Furthermore, he stated that he does not care if we suspend him and stated that he wants to go home. He was obviously very anxious and upset reciting issues from yesterday and the past that he felt were wrong.” In the May 2005 incident, after he and Hvlana were assigned to Griffin, Kennedy returned to the facility and banged on the door to the supervisors’ office, demanding to talk to the boss. When the supervisor responded, “I’m it. What’s wrong?” Kennedy said: “I’m tired of going to Griffin. Why do I have to go? This is bullshit.” He was told that if he didn’t want to go to Griffin, he could go home. Kennedy replied: “This place sucks” and went home. The supervisor’s report concludes: “I know going to Griffin is not everyone’s favorite duty. I and the other supervisors try our best to assign it to a different crew every day. I especially try to avoid sending Matt and Frank up there when I can. I felt with Frank’s attitude and aggression it was best to send him home.”

Finally, Shietinger’s testimony relates to some “history” with Kennedy; at a party in January 2007 for a co-worker. Alcohol was served and he was informed by other employees that Kennedy was drunk. Shietinger and other employees attempted to put him in a car to go home, and while they were doing so, Kennedy was saying how much he hated the Respondent and all its managers. Kennedy then took a swing at Shietinger, missed his face and hit him in the shoulder. They called for an ambulance and he kicked the ambulance door almost hitting a supervisor and denting the door, after which he was restrained. Hvlana later calmed him down and took him home. Shietinger testified that Kennedy later apologized to him and blamed the incident on a combination of medication and alcohol. Daymonde’s testimony about this January 2007 incident adds that while he was trying to restrain Kennedy, he threatened to kill Daymonde.

IV. Analysis

Under *Wright Line, A Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), the General Counsel must initially make a *prima facie* showing sufficient to support the inference that protected conduct was a “motivating factor” in the employer’s decision, in this case, to suspend Kennedy. Once this is established, the burden shifts to the employer to demonstrate that the same action would have been taken even in the absence of the protected conduct. The initial inquiry therefore is whether Counsel for the General Counsel has satisfied his burden of establishing that Kennedy was given the suspension on January 11 because of his support for, or activities on behalf of, the Union. I find that he hasn’t satisfied this initial burden. There are some major credibility issues and uncertainties regarding Kennedy’s Union activities prior to January 9. Kennedy testified that he placed a Union button in a car driven by O’Connor and Shietinger and that several minutes later O’Connor asked him if he did it, he admitted it, and they laughed about it. The initial problem with this situation is that Kennedy never testified whether this incident occurred prior to, or after, January 9. Further, he testified that when he told O’Connor that he had placed the button in the car, they both laughed about it. O’Connor and Shietinger, while testifying that they found a Union button in their car (Shietinger testified that it was after January 9, O’Connor was not certain whether it was before or after January 9) testified that O’Connor never asked Kennedy if he had placed the pin in the car. This is a difficult credibility determination as all three witnesses appeared to be testifying in a credible manner and there was no clear way of discrediting any of them. Because Shietinger and O’Connor testified that they knew that Kennedy was in favor of a union because “for years” and “in the

past...any time he's mad" he has said that the employees need a union, I find it unnecessary to make this credibility determination, especially since there was no evidence of any animus involved in this incident. The only other evidence establishing knowledge of his Union activities was Kennedy's testimony that O'Connor and Clabby saw him distributing notices of the January 8 meeting, which testimony Clabby and O'Connor denied. Because Clabby and O'Connor's testimony is supported by the testimony of employees Reyes and Harding, who testified that they did not see Kennedy distributing Union literature prior to January 9, I credit their testimony and find that they were not aware of these distributions prior to January 9. Finally, the General Counsel introduced into evidence the Union letter to Shietinger notifying him that Kennedy was a member of the Union Organizing Committee. However, this letter is dated January 9 and is postmarked January 10, a day after Kennedy was originally notified of his suspension, and was received by the Respondent on January 11, when the suspension was finalized and the period of the suspension was shortened. In summary, even if I were to credit Kennedy's testimony, not only was there limited Union activity on Kennedy's part prior to January 9, but there was no evidence of animus. I therefore find that Counsel for the General Counsel has not sustained his initial burden.

Even if I were to find that Counsel for the General Counsel had sustained his initial burden under *Wright Line*, I would find that the Respondent has satisfied its burden of establishing that it would have suspended Kennedy even in the absence of his Union activity. Admittedly, on the morning of January 9, Kennedy said over the radio, "The radio is working fine." Whether this is a sarcastic comment or one meant to be helpful to the Respondent is a subjective determination, but I can understand Shietinger's immediate response finding it sarcastic and objectionable. It was not the first time that Kennedy was involved in such an infraction; in May 2006 and October 2007 he was disciplined for radio misconduct. In addition, other employees were also disciplined for this offense and the numerous notices on the subject that the Respondent issued to its employees establishes that it viewed this issue as a serious one. Finally, as testified to by Shietinger, Kennedy's statement was unnecessary as Hvlana had just responded to their call, so they knew that the radio was working, and Shietinger's response: "It was another Frank Kennedy comment on the radio and it needs to stop" was not unreasonable, considering the similar situations that Kennedy was disciplined for three and twenty months earlier. Further, I find that no evidence of animus on the part of the Respondent. Even after Kennedy screamed at Daymonde and Shietinger on January 9, on January 11, the Respondent lessened Kennedy's suspension from three days to "time served," apparently seven hours. I therefore recommend that the allegation that Kennedy's suspension violated Section 8(a)(1)(3) of the Act be dismissed.

The remaining allegation is that on January 9, Respondent, by Daymonde, threatened its employees with discipline or discharge if they engaged in union or other protected activity. This allegation relates to a statement that Daymonde made to Mendoza after Kennedy left his office. There are three versions of this statement. Kennedy testified that as he was leaving Daymonde's office, he told Mendoza what had happened, and she said, "I'm going to put my two cents in." Mendoza then walked into Daymonde's office and said either: "This is wrong" or "This is not good" and Daymonde said something like, "If you don't shut up, you're going home next." Hvlana testified that after Kennedy left Daymonde's office, Mendoza said: "Do you want to know why we're getting a union in here?" and Daymonde responded: "If you don't knock it off, you're going to go home next." Daymonde testified that after Kennedy left his office he saw Mendoza talking; although he could not hear what she was saying, her tone of voice got higher. He felt that her actions "fed into the frenzy of what was going on" and he told her that she needed to stop feeding into the frenzy, that there was already enough of a commotion going on and she needed to stop. Although Kennedy, Hvlana and Daymonde all agree that Mendoza said something that Daymonde responded to, it is necessary to determine which witness to credit in

this situation and I credit Kennedy's testimony as the most reasonable. Although I found Hvlana to be a credible witness who clearly was uncomfortable and unhappy about testifying herein, I do not credit his testimony in this situation because I find that it is unlikely that these statements were made by Mendoza and Daymonde. Kennedy had been screaming at Daymonde and Shietinger about his innocence of the charge against him and their fitness to be supervisors prior to this encounter. The subject of the Union did not arise during that discussion and I find it unlikely that Mendoza would bring it up in her comments to Daymonde. Rather, I credit Kennedy's testimony as the most reasonable and believable and find that after Kennedy left Daymonde's office, Mendoza objected to his actions toward Kennedy, and he told her that if she didn't shut up, she would be going home next.

I find that when Mendoza went into Daymonde's office she was engaged in concerted activities. Prior to going into the office, after being told by Kennedy what happened with him, she told Kennedy that she was going to "put her two cents in," and when she went into Daymonde's office she said either, "This is wrong" or "this is not good." Although Kennedy's demeanor and actions in Daymonde's office that morning were over the line, and I have found that Kennedy's suspension was lawful, Mendoza had the right to support him and object to his suspension, and this support constitutes protected concerted activities, and Daymonde's threat to send her home for engaging in these protected concerted activities therefore violates Section 8(a)(1) of the Act. *Guardian Industrial Corp.*, 319 NLRB 542, 549 (1995); *Wilson Trophy Company v. NLRB*, 989 F. 2d 1502 (8th Cir. 1993).

Conclusions of Law

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act on January 9, 2008, by threatening an employee with discipline for engaging in protected concerted activities.

4. The Respondent did not violate the Act as further alleged in the Complaint by suspending Frank Kennedy on either January 9 or January 11, 2008.

The Remedy

Having found that the Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act, the posting of a notice.

Upon the foregoing findings of fact, conclusions of law and based upon the entire record, I hereby issue the following recommended⁶

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, American Medical Response, its officers, agents, successors and assigns, shall:

1. Cease and desist from threatening to discipline employees because they engaged in protected concerted activities, or in any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act:

(a) Within 14 days after service by the Region, post at its post at its facility in Bridgeport, Connecticut copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 9, 2008.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(c) **IT IS FURTHER ORDERED** that the remaining allegation of the Complaint, that the suspension of Frank Kennedy violated Section 8(a)(1)(3) of the Act be dismissed.

Dated, Washington, D.C., July 30, 2008.

Joel P. Biblowitz

Administrative Law Judge

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**APPENDIX
NOTICE TO EMPLOYEES**

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten to discipline you in retaliation for your protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

AMERICAN MEDICAL RESPONSE, INC.
(Employer)

Dated_____ **By**_____ **(Title)**
(Representative)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

280 Trumbull Street, 21st Floor
Hartford, Connecticut 06103-3503
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.